Yeong Ah Chee v Lee Chong Hai & Anor and other appeals

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NOS 02-485-91, 02-488-91, 02-490-91, 02-491-91, 02-494-91, 02-496-91, 02-498-91, 02-486-91, 02-487-91, 02-489-91, 02-492-91, 02-493-91, 02-495-91 AND 02-497-91
HARUN HASHIM, PEH SWEE CHIN AND EUSOFF CHIN SCJJ
3 JUNE 1994

Land Law *— Transfer — Registration — Effect of — Whether transfer to purchasers meant agreement of sale completed — Whether agreements were abandoned*

Land Law *— Restraints on dealings — Caveat — Function of caveat*

Land Law *— Sale of land — Bare trust — Whether purchaser was equitable owner — Rules of equity — Civil Law Act 1956*

Land Law *— Sale of land — Contract of sale — Trust deeds in favour of third parties executed by vendor — Whether enforceable — Whether vendor was owner in law and equity — Whether there was certainty of subject*

Trusts and Trustees *— Land — Whether trust completely constituted — Trust property not vested in trustee — Whether enforceable — Whether beneficiaries mere volunteers*

In March 1969, Lee Geok Thye, the first defendant in the court below, and several others ('the purchasers') agreed to buy land known as Lot 1008, CT 5188, Mukim of Pedas, District of Rembau. They each agreed to take a specific portion of the undivided Lot 1008 and to contribute a specified sum towards the purchase price of RM127,500. The purchasers further agreed to: (i) apply for sub-division of Lot 1008 in accordance with the portions chosen by them; (ii) appoint Lee Geok Thye and his brother, Lee Geok Swee (since deceased) ('the Lee brothers'), to sign the agreement of sale and purchase of Lot 1008 with the vendors; and (iii) thereafter enter into separate sale agreements ('the sale agreements') with the Lee brothers to buy their respective lots ('the lots'). The sale agreements were made in 1969.

On 17 June 1970, the Lee brothers executed seven trust deeds in respect of seven pieces of land ('the lands'), derived from the sub-division of Lot 1088, in favour of the plaintiffs. No reason was given for the execution of the trust deeds. The plaintiffs claimed as beneficiaries under the trust deeds and sued for declarations, retransfer of the lands and damages for fraudulent breach of trust in transferring the lands to the present owners.

The trial judge found in favour of the plaintiffs on the ground that although the sale agreements had been entered into before the trust deeds were executed, the sales had been abandoned because, inter

A alia: (a) there was no evidence that the full purchase price had been paid; (b) no interest passed under the sale agreements and the purchasers only obtained a caveatable interest on the property; and (c) the defendants had elected not to give evidence. The defendants, ie the purchasers and their assignees, appealed.

B **Held**, allowing all the appeals except for Appeal Nos 5 and 12:

(1) To say that the sale of the lands to the purchasers had been abandoned would be untenable because the lands had in fact been transferred to the present owners. Such transfers meant that the sale agreements had been completed and not abandoned. The C learned judge has clearly erred in drawing an indefensibly wrong inference.

(2) To suggest that nothing except a caveatable interest passed to the purchasers in 1969 was to fail to appreciate the function of a caveat, inter alia, of protecting an interest in land, or right to an interest in land.

D (3) Rules of equity apply to this country by the Civil Law Act 1956 and it is an old and well-settled rule of equity that under a valid contract for sale of land, the beneficial ownership of the land passes to the purchaser who becomes the equitable owner, while the vendor has a right to the purchase money for which he has a E lien on the land. When the full purchase price is paid, the vendor becomes a bare trustee for the purchaser.

(4) If the defendants elected not to give evidence but to make a submission, they were entitled to do so if they considered they could overcome the disadvantage of doing so.

F (5) There was no evidence to support the finding that the transfers to the purchasers or their assignees were void because of the trust deeds. Except for the trust deed in Appeal No 5, the other trust deeds lacked certainty of subject, ie the trust property, because the beneficial ownership of the lands had already passed to the purchasers when the sale agreements were executed. The Lee G brothers, as trustees under the trust deeds, could not vest the lands in themselves as trustees when, at the time of signing the trust deeds, they were not owners of the lands both in law and equity.

(6) As for Appeal No 5, there was no sale agreement between the Lee brothers and the predecessor-in-title of the present landowners of H Lot 2042. There was no evidence to show that the purchaser of Lot 2042 had sold the lot to the two present owners before the date of the trust deed. Thus, in the absence of such evidence, the Lee brothers, at the time of the signing of the trust deed in Appeal No 5, were the owners of the Lot 2040 both at law and in equity I and the trust created did not fail for uncertainty of subject or trust property.

(7) The plaintiffs were all volunteers who had not given any valuable consideration for the creation of the trust. It is a settled rule of

equity that a court of equity would not render assistance to a volunteer in the case of an incompletely constituted trust where the trust property has not been finally and completely vested in the trustee.

[Bahasa Malaysia summary

Pada bulan Mac 1969, defendan pertama di mahkamah bawah, Lee Geok Thye, dan beberapa orang lain ('pembeli itu') telah bersetuju membeli sebidang tanah yang dikenali sebagai Lot 1008, CT 5188, Mukim Pedas, Daerah Rembau. Mereka masing-masing bersetuju mengambil sebahagian tertentu daripada Lot 1008 yang tidak dibahagi dan untuk menyumbang sejumlah wang yang tertentu terhadap harga belian sebanyak RM127,500. Pembeli itu seterusnya bersetuju untuk: (i) memohon supaya Lot 1008 dipecah bahagi mengikut bahagian yang dipilih oleh mereka; (ii) melantik Lee Geok Thye dan abangnya, Lee Geok Swee (yang kemudiannya telah meninggal dunia), ('adik-beradik Lee'), untuk menandatangani perjanjian jualbeli Lot 1008 dengan penjualnya; dan (ii) kemudiannya mengikat perjanjian jualan yang berasingan ('perjanjian jualan itu') dengan adik-beradik Lee untuk membeli lot mereka masing-masing ('lot itu'). Perjanjian jualan itu telah diikat pada tahun 1969.

Pada 17 Jun 1970, adik-beradik Lee telah menyempurnakan tujuh suratikatan amanah berkenaan dengan tujuh bidang tanah ('tanah itu') yang dahulunya membentuk Lot 1088, atas nama plaintif. Tidak ada sebab yang diberikan mengapa suratikatan amanah itu disempurnakan. Plaintif telah membuat tuntutan sebagai benefisiari di bawah suratikatan amanah itu dan mendakwa untuk mendapatkan deklarasi, pemindahan semula hakmilik tanah itu dan ganti rugi untuk pecah amanah fraud kerana melakukan pindahmilik tanah itu kepada pemunya masakini tanah itu.

Hakim perbicaraan telah membuat keputusan memihak kepada plaintif atas dasar bahawa walaupun perjanjian jualan itu telah diikat sebelum suratikatan amanah itu disempurnakan, jualan tanah itu telah dihentikan kerana, antara lain: (a) tidak ada bukti bahawa harga belian penuh telah dibayar; (b) tidak ada kepentingan yang dialihkan di bawah perjanjian jualan itu dan pembeli itu hanya mendapat suatu kepentingan boleh kaveat di dalam tanah itu; dan (c) defendan telah memilih supaya tidak memberi keterangan. Defendan, iaitu pembeli itu dan pemegang serahhak mereka, telah membuat rayuan.

Diputuskan, membenarkan kesemua rayuan itu kecuali Rayuan No 5 dan 12:

(1) Pendapat bahawa jualan tanah itu kepada pembeli itu telah dihentikan tidak boleh dipertahankan kerana tanah itu telah pada hakikatnya dipindahmilik kepada pemunya masakini. Pindahmilik tersebut bermakna bahawa perjanjian jualan itu telah disempurnakan dan bukannya dihentikan. Hakim yang arif jelas

telah membuat kesilapan apabila membuat inferens yang salah yang tidak boleh dipertahankan.

(2) Dengan menyarankan bahawa hanya suatu kepentingan boleh kaveat telah diberikan kepada pembeli itu pada tahun 1969, menunjukkan suatu kegagalan untuk menyedari sepenuhnya fungsi suatu kaveat, iaitu antara lain, untuk melindungi suatu kepentingan di dalam tanah, atau suatu hak untuk mendapatkan kepentingan di dalam tanah.

(3) Rukun-rukun ekuiti terpakai di negara ini melalui Akta Undang-Undang Sivil 1956 dan adalah menjadi suatu rukun ekuiti yang lama dan mantap bahawa di bawah suatu kontrak jualbeli tanah yang sah, pemunyaan benefisial tanah itu beralih kepada pembeli yang menjadi pemunya ekuiti, sementara penjual mempunyai hak mendapatkan wang belian itu atas mana beliau mempunyai suatu lien dalam tanah itu. Apabila harga belian penuh telah dibayar, penjual menjadi seorang 'bare trustee' untuk pembeli.

(4) Jika defendan memilih supaya tidak memberi keterangan tetapi membuat penghujahan, mereka berhak berbuat demikian jika mereka berpendapat bahawa mereka boleh mengatasi kelemahan melakukan sedemikian.

(5) Tidak ada keterangan untuk menyokong pendapat bahawa pindahmilik kepada pembeli atau pemegang serahhak pembeli itu tidak sah kerana suratikatan amanah itu. Melainkan suratikatan amanah di dalam Rayuan No 5, suratikatan amanah yang lain tidak mempunyai kepastian subjek, iaitu harta amanah, kerana pemunyaan benefisial tanah itu telahpun beralih kepada pembeli itu apabila perjanjian jualan itu disempurnakan. Adik-beradik Lee, sebagai pemegang amanah di bawah suratikatan amanah itu, tidak boleh meletakhak tanah itu pada diri mereka sebagai pemegang amanah kerana pada masa penyempurnaan suratikatan amanah itu, mereka tidak merupakan pemunya tanah itu di sisi undang-undang atau ekuiti.

(6) Berkenaan dengan Rayuan No 5, tidak ada sebarang perjanjian jualan di antara adik-beradik Lee dan pendulu dalam hakmilik pemunya masakini Lot 2042. Tidak ada bukti untuk menunjukkan bahawa pembeli Lot 2042 telah menjual lot itu kepada dua orang pemunya masakini sebelum tarikh suratikatan amanah itu. Oleh itu, tanpa keterangan seperti itu, adik-beradik Lee, pada masa menandatangani suratikatan amanah di dalam Rayuan No 5, merupakan pemunya Lot 2042 di sisi undang-undang dan ekuiti dan amanah yang diwujudkan itu tidak gagal kerana ketidakpastian subjek atau harta amanah.

(7) Kesemua plaintif merupakan sukarelawan yang tidak memberi sebarang balasan yang bernilai untuk pewujudan amanah itu. Adalah menjadi suatu rukun ekuiti yang mantap bahawa suatu mahkamah ekuiti tidak akan menolong seorang sukarelawan di dalam kes suatu amanah yang tidak diwujudkan dengan sempurna

di mana harta amanah itu tidak diletakhak pada pemegang amanah dengan muktamad dan sempurna.] A

[*Editorial Note*: The appeals set out above are referred to as Appeal Nos 1–14, respectively.]

B

Notes

For cases on transfers of land, see 8 *Mallal's Digest* (4th Ed) paras 2105, 2106.

For cases on bare trusts, see 8 *Mallal's Digest* (4th Ed) paras1812, 1813; and [1990] Mallal's Digest 835, 836.

For cases on caveats, see 8 *Mallal's Digest* (4th Ed) paras 1687–1775; [1989] Mallal's Digest 1084–1090, 1133; [1990] Mallal's Digest 837–845; [1991] Mallal's Digest 1318–1328; and [1992] Mallal's Digest 1187–1206. C

For a case on a trust of land, see 8 *Mallal's Digest* (4th Ed) para 968.

D

Cases referred to

1 *Lysaght v Edwards* (1876) 2 Ch D 499 (folld)

2 *Inter-Continental Mining Co Sdn Bhd v Societe des Etains de Bayas Tudjuh* [1974] 1 MLJ 145 (folld)

3 *Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors* [1974] 2 MLJ 45 (folld) E

4 *Oh Hiam & Ors v Tham Kong* [1980] 2 MLJ 159 (folld)

5 *Milroy v Lord* (1862) 4 De GF & J 264 (folld)

Appeal from: Civil Suit Nos 22–38–88, 22–39–88, 22–40–88, 22–41–88, 22–42–88, 22–43–88, 22–44–88, 22–38–88, 22–39–88, 22–40–88, 22–41–88, 22–42–88, 22–43–88 and 22–44–88 (High Court, Seremban) F

Lee Kong Fee (*Lee Kong Fee & Co*) for the appellants in Appeal Nos 1–7.

Cecil Abraham (*Robert Lazar* with him) (*Shearn Delamore & Co*) for the appellants in Appeal Nos 8–14. G

Upali Masacorale (*Jackson & Masacorale*) for the respondents.

Cur Adv Vult

Peh Swee Chin SCJ (delivering the judgment of the court): The above 14 appeals were heard together. The same substantial questions of law and fact are involved. The 14 appeals have been lodged against the same order of the High Court made on 8 October 1991. H

There is one appellant in each of the first seven civil appeals as listed and set out above, except Appeal No 5 where there are two appellants instead and these two appellants are registered presently as proprietors of a piece of land. In the other six appeals, there is a sole appellant in each of them, each being registered presently as the proprietor of a piece of land. It will be seen that a piece of land is involved in each appeal, totalling seven pieces of land. I

A The sole appellant in each of the next seven appeals, ie Appeal Nos 8–14 as similarly set out above is the same person, one Lee Geok Thye, a surviving trustee out of two trustees, viz Lee Geok Swee (since deceased) and Lee Geok Thye, in seven trust deeds, the two original trustees were brothers and uncles to the respondents in the above 14 appeals. A trust deed is involved in each of those appeals concerning each of the seven B pieces of land stated earlier.

The respondents consist of three persons, viz George Lee, Lee Chong Hai and Lee Boon Guan, one or two of them jointly claim to be beneficiaries under each of the seven trust deeds in respect of each of the seven pieces of land, respectively, as stated above.

C The common date of the seven trust deeds is crucial; it is 17 June 1970.

It is inevitably necessary and also convenient to set out at least a copy of one of the trust deeds for the words therein, eg in Appeal No 8 above, for the trust deeds are identical except for: (1) the variation in the names of the three brothers as beneficiaries; and (2) the variation in the lot numbers of the seven pieces of land, each trust deed being in respect of each of the D seven pieces of land stated above. The trust deed to be set out for illustration is as follows:

Trust deed

Know all men by these presents that we, Lee Geok Swee and Lee Geok Thye, both of No 115, Jalan Yam Tuan, Kuala Pilah do hereby hold the whole of the E land held under Qualified Title (R) No 71, Lot No 2039 in the Mukim of Pedas, District of Rembau on trust for Lee Chong Hai and Lee Boon Guan.

In witness whereof we have hereunto set our hands on 17 June 1970.

Signed by the said) —Sgd—
Lee Geok Swee and) —Sgd—
F Lee Geok Thye, in)
the presence of)

—Sgd—
(Mohd Yazid Baba)
Advocate and solicitor
Seremban
G

The above 14 appeals arose out of the seven civil suits mentioned above. In the seven civil suits, the three said beneficiaries are the plaintiffs, suing either singly or jointly, for declarations, retransfer of the seven pieces of land, damages for fraudulent breach of trust allegedly committed by the two original trustees (but only one of them, the surviving trustee, viz Lee H Geok Thye, was sued), in transferring the seven pieces of land to the present owners of the seven pieces of the land, in breach of the seven trust deeds, (the present owners of the seven pieces of land are hereafter called 'the present landowners' and seven pieces of land, 'the lands', wherever the context requires it).

I Lee Geok Thye and the seven present landowners deny the allegations and claim that when the seven trust deeds were executed by Lee Geok Thye and the deceased co-trustee ('the trustees'), they were no longer owners of the said seven pieces of land and thus all the trust deeds are void. The present landowners plead that they were purchasers of the lands or that in

some cases they had acquired them bona fide or for valuable consideration from such purchasers of lands. All such original purchasers bought the lands before the date of the seven trust deeds from the two trustees of the said seven trust deeds. A

No reason was given for having the seven trust deeds done or signed, by any of the three beneficiaries, nor was the solicitor who witnessed the signing of the seven trust deeds called. No cross-examination was also directed on this reason. It is common ground that no valuable consideration was given by the three beneficiaries for the creation of the trusts by means of the seven trust deeds. There seems to be a tacit agreement by all parties to keep such reason under wraps. B

All the documents are either agreed, as from agreed documents or agreed bundles of documents, touched on in evidence or submission. All the bundles were, at the time of hearing in the lower court, expressly treated by all parties as agreed bundles. C

The history of these appeals began with the proposal by Lee Geok Thye and the deceased co-trustee, viz his brother called Lee Geok Swee, together with nine other persons to buy Lot 1008 held under CT 5188, Mukim of Pedas, District of Rembau, State of Negeri Sembilan and this they did for the purpose of building up the financial capability to buy the said Lot 1008 from the vendors. It is not disputed and as shown by photocopies of the documents of title of the lands that they used to form part of the said Lot 1008 and such documents of title are derivative documents of title from CT 5188 aforesaid. The proposal was reduced into an agreement in writing, viz D15, by which they agreed to each take a specific portion of the undivided Lot 1008 and to contribute a specified sum each therefor. They further agreed to apply for sub-division of the Lot 1008 in accordance with the portions chosen by them. D15 is set out below: D E F

> This agreement is made on 5 March 1969 between Lee Geok Thye and Lee Geok Swee both of 115 Jalan Yam Tuan, Kuala Pilah (hereinafter called the party of the first part), Yong Meng of 15 Main Road, Pedas, Rembau (hereinafter called the party of the second part), Fong Yap Moi (f), Wong Siong (f), Wong Yau (f), and Yong Kum all of 90 Main Road, Kuala Sawah, Negeri Sembilan (hereinafter called the party of the third part), Chai Swee Mork of Legong Ulu Estate, Kota (hereinafter called the party of the fourth part), Yong Siong Lam of Lubok China, Rembau (hereinafter called the party of the fifth part), Chan Huay (f) of 31 Main Road, Pedas (hereinafter called the party of the sixth part), Chua Bee Eng (f) of 31 Main Road, Pedas (hereinafter called the party of the seventh part). G
>
> Whereas the parties hereto have agreed to purchase the whole of the land held under the Certificate of Title No 5188 for Lot No 1008 Mukim of Pedas, District of Rembau (hereinafter referred to as the said land) at the purchase price of RM127,500 and the parties have agreed that each shall put up the following sums in respect of the portion of the said land each party is purchasing having regard to the condition and age of the rubber trees planted therein, which said portions are marked and numbered on the sketch plan annexed thereto. H
>
> And whereas the parties hereto had nominated the party of the first part to enter into an agreement with the owners of the said land to purchase the said land at the agreed price of RM127,500. I

In consideration of the premises the parties hereto have agreed as follows:

Portions numbered	Area (acres)	Sum (RM)	To be put up by which party
1 and 7	12.00	23,750.00	Party of the second part
4 and 8	11.75	21,032.50	Party of the third part
2	9.75	17,550.00	Party of the fourth part
3	9.75	17,550.00	Party of the fifth part
6	9.75	17,550.00	Party of the sixth part
5	9.75	17,550.00	Party of the seventh part
9, 10, 11 and 12	158.125	12,517.50	Party of the first part
	221.375	127,500.00	

Upon the sums mentioned above being paid in full by the parties as specified above, the said land shall be sub-divided into the portions numbered above and the parties caused to be registered proprietors of their respective portions of the said land.

The party of the first part has purchased the said land and has made application for the sub-division of the said land in accordance with the sketch plan annexed hereto.

In witness whereof the parties have hereunto set their hands at Seremban the day, month and year first above written.

Signed by the party of the part Lee Geok Thye and Lee Geok Swee in the presence of: —Sgd—

Signed by the party of the second part, Yong Meng in the presence of: —Sgd—

Signed by the party of the third part, Fong Yap Moi (f), Wong Siong (f), Wong Yau (f) and Yong Kum in the presence of: —Sgd—

Signed by the tarty of the fourth tart, Chai Swee Mork in the presence of: —Sgd—

Signed by the party of the fifth part, Yong Siong Lam in the presence of: —Sgd—

Signed by the party of the sixth part, Chan Huay (f) in the presence: —Sgd—

Signed by the party of the seventh part, Chua Bee Eng (f) in the presence of: —Sgd—

It will have been noticed also from D15 that all parties appointed Lee Geok Thye and his brother, ie the said Lee Geok Swee, since deceased, to sign the agreement of sale and purchase of the Lot 1008 from the vendors, (the two brothers are hereafter called 'the Lee brothers' or 'the two trustees' wherever it is appropriate).

The date of D15 is crucial, it is 5 March 1969, a date anterior to the common date of the seven trust deeds which in turn is 17 June 1970.

A few days after the date of D15, the Lee brothers lost no time in signing the sale and purchase agreement of Lot 1008 from its vendors by paying a deposit of 10% [and] agreeing to pay within a certain time thereafter, the balance of the price, the total amount of which was RM127,500. The present landowners' documents of title which are sub-divisional titles derived from the earlier CT 5188 show they were issued first by the authorities to the Lee brothers who then transferred them to the present landowners. This means inevitably that CT 5188 must have already been transferred to the Lee brothers by its vendors so that the sub-divisional titles (or qualified titles) were then issued first to the name of the Lee brothers subsequently.

With this agreement from Lot 1008's vendors, the Lee brothers would be bound in our opinion to transfer the sub-divisional titles for the undivided shares corresponding to the portions chosen by the other parties to D15 to them (and D15 is hereafter called 'the joint venture agreement'), on payment of the respective prices by the joint venture agreement parties.

However, the joint venture parties chose a form in a more elaborate way for the transactions among themselves to take place, the form being for the Lee brothers as vendors in turn and the other joint venture parties as purchasers, entering into respective sale and purchase agreements to buy the portions chosen by the other joint venture parties. The Lee brothers did not, of course, sign an agreement of sale and purchase to buy from themselves the portions chosen by themselves.

All these sale and purchase agreements among the joint venture parties all provided for the payment of 10% deposit with the balance of the price in each case to be paid within certain time thereafter (such agreements are called 'the subsidiary sale and purchase agreements' hereafter).

It is of great importance to emphasize that all these subsidiary sale and purchase agreements among the joint venture parties were made in 1969 before the common date in the seven trust deeds, viz 17 June 1970. They have not been challenged expressly for their genuineness with which this court is also satisfied.

We conclude as follows from agreements and evidence taken in connection with the above civil appeals listed as above:

(a) The appellant in Appeal No 1 above, was an assignee of one of the seven pieces of land bought by a joint venture party from the Lee brothers in one of the subsidiary sale and purchase agreements.
(b) The appellant in Appeal No 2 above was the direct purchaser from the Lee brothers in one of the subsidiary sale and purchase agreements.
(c) The appellant in Appeal No 3 above was also the direct purchaser from the Lee brothers in one of these subsidiary sale and purchase agreements.
(e) The appellant in Appeal No 5 will be dealt with by the court later on, separately and more comprehensively.
(f) The appellant in Appeal No 6 above was a nominee or nominated by such second party of the second party in the joint venture agreement dated 5 March 1969 to buy from the Lee brothers.
(g) The appellant in Appeal No 7 above was the direct purchaser from the Lee brothers in one of these subsidiary sale and purchase agreements.

In giving judgment in favour of the respondents in the court below, the learned judge, held, first, in effect, that though these subsidiary sale and purchase agreements were made before the common date of the trust deeds, the sales by these subsidiary sale and purchase agreements had been 'abandoned', this being an 'irresistible presumption'. This 'irresistible presumption' according to the learned judge, seems to have arisen wholly or partly from:

(a) the absence of evidence about the full purchase price having been paid;
(b) from the fact that the transfers were executed in favour of the present landowners some 'seven years and three months later';
(c) the fact that Lee Geok Thye and the present landowners should know that the seven pieces of land were subject to the existing trusts, at the time of such transfers;
(d) the fact that there was no sanction of the court for the transfers which were therefore void;
(e) from the fact that no interest passed to the purchasers under the subsidiary sale and purchase agreements in 1969 on mere payment of a deposit (of 10% of the price) for if such interest had passed, the Lee brothers would not have signed these trust deeds, 'in fact, the purchasers only obtained a caveatable interest on the property and nothing else and they did not even bother to lodge caveats'; and
(f) the fact that the defendants had elected not to give evidence.

For the reasons given by the learned judge and summarized above, the appellants in Appeal Nos 1–14 above (viz the landowners and the surviving trustee in the connected seven civil suits) had no defence, judgment was therefore entered against all defendants as prayed.

For Lee Geok Thye, viz the surviving trustee, or one of said two original trustees (and also the first defendant in all the seven civil suits), the learned judge further stated that he knew that the seven pieces of land were trust property and so did all the present landowners and the lands were transferred to the present landowners without an order of court, and such transfers were therefore void, constituting a fraud within s 340(2) of the National Land Code 1965.

In the first place, to say that the sale of the seven pieces of land through those subsidiary agreements of sale and purchase made in 1969 between the Lee brothers and other parties in the joint venture agreement dated 5 March 1969 had been abandoned would be untenable because the seven pieces of land had in fact been transferred to the present landowners. If the Lee brothers had not received the balance of purchase price from each of these parties in the joint venture agreement, in pursuance of the subsidiary agreements of sale and purchase, it is really inconceivable as to why the Lee brothers should have transferred the lands to them. Such transfers would mean that the contracts, viz these subsidiary sale and purchase agreements, had been completed, a far cry from an abandonment of the contracts. The learned judge has clearly erred in drawing an indefensibly wrong inference.

In the second place, to suggest that nothing else except a caveatable interest passed to the purchasers in 1969 on the payment of a mere deposit,

is to fail to appreciate the function of a caveat, inter alia, of protecting an interest in land, or right to an interest in land.

It is an old and well-settled rule of equity that under a valid contract for the sale of land, the beneficial ownership of the land passes to the purchaser who becomes the equitable owner, the vendor having a right to the purchase money for which he has a lien on the land. Please see *Lysaght v Edwards*[1] and this case was cited with approval very often in our courts, eg by the Federal Court in *Inter-Continental Mining Co Sdn Bhd v Societe des Etains de Bayas Tudjuh*[2] and *Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors.*[3] When the full purchase price is paid, the vendor becomes a bare trustee, ie unqualified trustee for the purchaser. It is also of salutary effect to remind ourselves of the fact that rules of equity apply to this country by the Civil Law Act 1956 and of the observation of Lord Russel of Killowen in *Oh Hiam & Ors v Tham Kong*[4] that 'the Torrens system is designed to provide simplicity and certitude in transfer of land which is amply achieved without depriving equity of the ability to exercise its jurisdiction in personam on grounds of conscience'.

In third place, if the appellants, viz the defendants, elected not to give evidence but to make a submission, they were entitled to do so if they considered they could overcome the disadvantage of doing so.

In the fourth place, to say that the transfers to the purchasers (who were direct purchasers from the Lee brothers in 1969 or assignees as nominees of such purchasers) were void because of the trust deeds, could not be supported by the evidence both oral and documentary in this case. In this connection, we are unable to agree with the trial judge that the trust deeds in these appeals are perfect with the three certainties; we agree with the learned judge only in respect of the trust deed in the case of Appeal No 5 which will be dealt with separately later on.

The three essentials of a valid trust are: (a) certainty of words; (b) certainty of subject; and (c) certainty of object. Looking at the seven trust deeds except for that in Civil Appeal No 5, there is certainty of words and also there is certainty of object, ie the names of beneficiaries, but there is no certainty of subject, ie trust property, viz the lands, because the beneficial ownership of the lands passed to the purchasers of those subsidiary agreements of sale and purchase in 1969 when the sale of these lands took place, ie before the trust deeds were executed. The Lee brothers, named as the trustees of these trust deeds, were also the settlors of the trusts created by those trust deeds. It is a rule that a settlor must vest the trust property (subject) in the trustee completely, please see *Milroy v Lord.*[5] How could the settlors (the Lee brothers), vest the lands in themselves as trustees when, at the time of signing the trust deeds, they were not owners of the lands both in law and equity as well? Please see *Lysaght.*[1]

Except for Appeal No 5 as listed above, ie SCCA 02–494–91 (High Court Civil Suit No 22–42–1988) which we repeat we shall deal with separately and comprehensively later on, all the trusts created by all the trust deeds in all the other civil appeals above-mentioned fail because the relevant trust deeds are invalid, by virtue of uncertainty of the respective subjects of the trusts.

A There is also one other matter, ie the counterclaim of the appellant in the lower court and concerned in each of the civil appeals, viz Appeal Nos 8–14. No evidence at all having been led by such appellant in the court below on such claim, such appellant having elected to give no evidence at the end of plaintiffs' case, the counterclaim must continue to stand dismissed.

B We will summarize our formal orders and consequential directions at the end of our judgment.

We now deal with Appeal No 5 referred to earlier. From a photocopy of the document of title in respect of Lot 2042, Mukim of Pedas, District of Rembau held under QT(R), Lot 2042 was transferred to the appellants in this appeal, viz Chok Ang Hai and Lee Geok by Lee Geok Thye, the C surviving trustee, and such transfer was registered on 27 November 1976, (note the small similarity in the name of trustee and one of the transferees, it not being a typing error).

Further in the trust deed, the Lot 2042 was declared by the trustees to be held in trust for George Lee, the respondent in this particular appeal.

D There was no subsidiary agreement of sale and purchase signed between the Lee brothers and the predecessor-in-title of the present landowners of this Lot 2042. From D15 and some sketch plans, we know that this lot was originally agreed among all the parties in the joint venture agreement to be purchased by one Chai Swee Mork, the fourth party in D15. There is no evidence, documentary or oral, to show the said Chai Swee Mork had sold E before the date of the trust deed herein to these two present landowners apart from some passing reference to it by a member of the firm of solicitors for these present landowners in his affidavit filed in support of their application to add the extracted court order, etc, to the appeal record at the outset of the hearing of these 14 appeals before us. No evidence has been given by Lee Geok Thye (the first respondent) or by Chai Swee Mork about F the sale to these two present landowners.

Thus, in the absence of such evidence acceptable to the court, the Lee brothers, at the time of the signing of the trust deed in this Appeal No 5, were the owners of the Lot 2040, both at law and in equity and the trust created by it does not fail for uncertainty of subject or trust property.

G The learned judge made a finding that George Lee (and all other beneficiaries concerned) were all volunteers, but did not deal with this finding and its effect anywhere else further in his judgment. We agree with this finding, however.

A volunteer is a beneficiary who has not given any valuable consideration (in the usual sense of the ordinary law of contract), for the creation of a H settlement or trust.

It is a settled rule of equity that a court of equity would not render assistance to a volunteer in the case of an incompletely constituted trust.

An incompletely constituted trust is one in which the trust property has not been finally and completely vested in the trustee.

I An example of such an incompletely constituted trust is in *Milroy v Lord*,[5] in which certain bank shares were intended to be trust property of the trust deed but the settlor of the trust, when signing the transfer of the shares in favour of the trustee, used the wrong transfer form, and the shares did not reach the share register.

Here in Appeal No 5, the trust is not only valid for the reason stated above, but it is also a completely constituted trust from the point of view in regard to a volunteer, because Lot 2040 had completely vested in the trustees when the trust deed was signed on 17 June 1970, there being no evidence to the contrary. Thus the appeal ought to be dismissed in Appeal No 5 and also in Appeal No 12, in which Lee Geok Thye, the appellant, is the trustee in respect of this Lot 2040 also.

To sum up, we allow those of the civil appeals listed above being Appeal Nos 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13 and 14 with costs here and below and with regard to Appeal Nos 8, 9, 10, 11, 12, 13 and 14, the dismissal by the lower court of the counterclaim of each appellant concerned in each of them at the lower court is hereby confirmed but the costs of such dismissal of such counterclaim incurred in the lower court will remain payable as ordered by the lower court, but no further costs on it in this court will be paid.

We also dismiss the Appeal Nos 5 and 12 listed above, with costs here and below.

Order accordingly.

Reported by Prof Ahmad Ibrahim